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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S
MOTION TO PRECLUDE EVIDENCE
REGARDING CLIENT COMPLAINTS
AND FINRA

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Preclude Evidence Regarding Client Complaints and FINRA. The State has previously stated it will not seek to introduce evidence regarding Defendant's business practices in its case-in-chief except as they relate to his professional and personal relationship with Barbara O'non and his overall financial condition.

In the event that Defendant seeks to introduce evidence of "good character" during the mitigation/aggravation or penalty phase of the trial, the State may introduce evidence regarding client complaints and FINRA for rebuttal. *See State v. Shepherd*, 27 Ariz.App. 448, 450, 555 P.2d 1136, 1138 (1976) (The State may offer any competent evidence to rebut any material evidence introduced by a defendant.)

1 At hearings during the week of January 12, 2010, the State informed the Court that it
2 will seek to introduce evidence of the personal and professional relationship between
3 Defendant and Barbara O'non. This evidence will demonstrate that, from early 2008 up to
4 the time of Carol's death on July 2, 2008, Defendant was under increasing pressure and stress
5 from several different sources with financial pressures lead among them.
6

7 It was during this time frame that Defendant and Barbara O'non were in the process
8 of ending both their professional and personal relationships. Ms. O'non had worked with
9 Defendant since 1999 and had been in an on-again, off-again romantic relationship with
10 Defendant for several years as well. As has been demonstrated to this Court, Defendant's
11 compensation had diminished while his already significant debt was increasing. The
12 dissolution of the professional relationship with Ms. O'non would cause further reduction in
13 Defendant's compensation due to Ms. O'non's insistence that the "split" of their accounts be
14 more in her favor. Also, his divorce from Carol had become a full blown battle over money,
15 specifically how the community debts would be paid. The primary liquid asset in the
16 community property was Defendant's sizable 401K.
17

18 Ms. O'non will offer testimony that on at least two occasions she became physically
19 afraid of Defendant due to his sudden outbursts of anger when she either questioned his
20 business dealings with their clients or other business related matters. These are issues which
21 affected his compensation and overall financial condition. Ms. O'non will testify that these
22 events did not take place in public; that both incidents occurred while they were alone and
23 that on one occasion Defendant was standing nose to nose "dead-square in front of me" and
24 was so aggressive she felt physically threatened.
25
26

1 This Court heard statements of Defendant's peaceful nature, that he would not even
2 kill insects or spiders. The fact that when out of the public's eye, Defendant could and did
3 become enraged when challenged regarding his business dealings and financial condition is
4 inherently relevant to both the theory of the State's case-in-chief and the (F)(5) and (F)(6)
5 aggravators.

6
7 As previously stated, Defendant's business dealings will not be introduced with the
8 intent of proving Defendant was a poor businessman or that he defrauded his clients;
9 however, the nature of the dealings as they relate to Defendant's financial condition is
10 relevant and should not be excluded.

11 "[R]elevant evidence" means evidence having a "tendency" to
12 make the existence of a fact of consequence more or less
13 probable. Rule 401 *Ariz. R. Evid.* Evidence is relevant if it has
14 any basis in reason to prove a material fact in issue or if it tends
15 to cast light on the crime charged. *State v. Moss*, 119 Ariz. 4,
16 579 P.2d 42 (1978).

17 *State v. Adamson*, 136 Ariz. 250, 261, 665 P.2d 972, 983 (1983).

18 "Relevant evidence may be excluded, however, 'if its probative value is substantially
19 outweighed by the danger of unfair prejudice, confusion of the issues, or misleading to the
20 jury, or by considerations of undue delay, waste of time, or needless presentation of
21 cumulative evidence.' *Ariz. R. Evid.* 403." *State v. Connor*, 215 Ariz. 553, 562, 161 P.3d
22 596, 605 (App. 2007).

23 Here, there is no danger of unfair prejudice. The fact that Defendant had
24 disagreements with Ms. O'non regarding his business dealings is simply part of this case and
25 will not be introduced in a manner which might inflame the jury. The fact is these types of
26 complaints, specifically in light of the Bernie Madoff ponzie scheme incident, are not rare.

1 Any financial professional is likely to have one or more complaints filed by clients who, after
2 a significant loss, believed their investments should have been better protected.

3 **CONCLUSION:**

4 The evidence Defendant's business dealings as they relate to his financial condition
5 and his relationship Defendant with Ms. O'non is not unfairly prejudicial and should not be
6 excluded. Defendant's Motion should be denied.
7

8
9 RESPECTFULLY SUBMITTED this 22nd day of March, 2010.

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11 Sheila Sullivan Polk
12 YAVAPAI COUNTY ATTORNEY

13
14 By: Joseph C. Butner
15 Joseph C. Butner
16 Deputy County Attorney

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COPIES of the foregoing delivered this
22nd day of March, 2010 to:

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